

# LABOR COMMISSION OF UTAH

QUARTERLY NEWSLETTER  
4<sup>TH</sup> QUARTER 2004

## ON-THE-JOB



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# WHO WE ARE..... WHAT WE DO

**J**ust who are we and why are we here? Although we also ask ourselves that periodically, we'll attempt to justify our existence with a brief summary of who we are and what we do.

The Labor Commission is administered by a Commissioner who is appointed by the governor with the advice and consent of the Utah Senate. The Commissioner has general supervisory authority over all the Commission's divisions and direct authority over the Commission's Administration Division. The Commissioner is empowered by law to enact regulations for the Commission's divisions. The Commissioner or alternatively, the Appeals Board, reviews appeals from the decisions of the Adjudication Division's administrative law judges. The divisions of the Labor Commission and their responsibilities are :

**Antidiscrimination and Labor Division (UALD):** UALD has three distinct missions which address employment standards, fair housing and employment discrimination.

The ***Employment Standards Bureau*** administers Utah laws for payment of wages, employment of minors, and minimum wage.

The ***Fair Housing Unit*** investigates, mediates and resolves complaints of housing discrimination based on race, religion, color, sex, national origin, familial status, disability or source of income.

The ***Employment Discrimination Unit*** investigates, mediates, and resolves complaints of employment discrimination based on race, religion, color, sex, national origin, disability, age, pregnancy, childbirth, or pregnancy-related conditions.

**Industrial Accidents Division:** Sets policy for payment of workers' compensation benefits and enforces the law's requirement that all employers provide workers' compensation coverage. The division also provides mediation services to resolve disputes between injured workers, employers, medical providers and insurance companies.

**Utah Occupational Safety and Health Division (UOSH):** The mission of UOSH is to preserve human resources by providing safety and health assistance to workers and employers. The division accomplishes this with consultation, training, statistics and education services, and by establishing and enforcing occupational safety and health standards.

In 1973, Utah established UOSH to address issues  
See **Who We Are** on page 2 ...

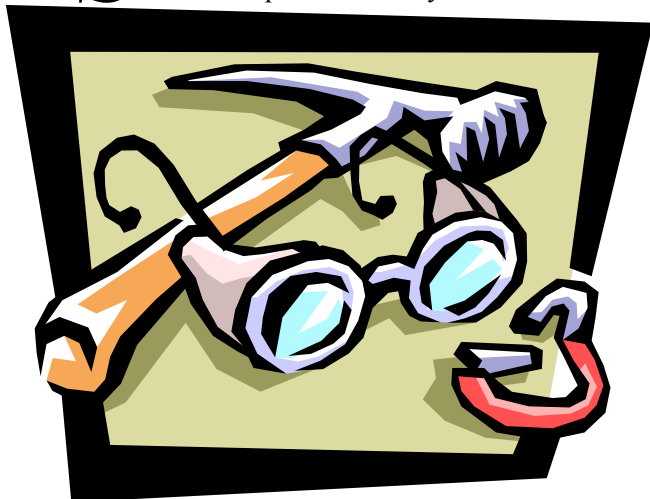
## MISSION STATEMENT

**To serve the people of the state by assuring a safe, healthful, fair, non-discriminatory work environment; to assure fair housing practices; and to promote the general welfare of the state's employees and employers.**

# Safer Utah Workplaces

by Tori Burns - Compliance Manager, UOSH Division

“Safer Utah Workplaces” - the vision of Utah Occupational Safety and Health



(UOSH). These few simple words impact Utah families every day to ensure that every working man, woman, or youth returns home safe and healthy at the end of the work shift.

To achieve this vision, UOSH has developed a five-year Strategic Management Plan. This plan consists of three goals and UOSH is committed to focusing its resources on achieving them:

- 1) To reduce occupational hazards through direct intervention;
- 2) To promote a safety and health culture through compliance assistance, cooperative programs, and strong leadership; and
- 3) To maximize UOSH's effectiveness and efficiency by strengthening its capabilities and infrastructure.

The first goal, to reduce occupational hazards through direct intervention, is the activity that most employers and employees associate with UOSH. This goal includes a variety of direct interactions between UOSH and employers and their employees of which workplace enforcement inspections is one. UOSH's strategy is to achieve this part of the goal through exercising strong, fair, and effective enforcement in those industrial sectors which are characterized by exposure to hazards resulting in serious injury or illness such as amputation, silica, and lead. Enforcement is also critical in those industrial sectors which are experiencing a high number of work-related injuries, illnesses, and fatalities.

Looking at the frequency and types of violations

identified through UOSH's focused inspection activity for the last fiscal year may provide direction to employers and their employees. This will assist them to fine tune their safety and health resources and avoid work related injury, illness and citations. The table on page three lists the ten most frequently cited standards by industrial sector.

See **Safer** on page 3...

## Who We Are... continued from page 1

related to occupational safety and health, thereby assuming jurisdiction over such matters from federal OSHA. Under federal law, UOSH must be "at least as effective" as OSHA in ensuring safe and healthful working conditions.

UOSH strives for a more common-sense approach by augmenting its enforcement program with a Workplace Safety and Health Consultation Service, available at no charge to any Utah employer. UOSH consultants will assess facilities for potential health and safety hazards that can then be corrected without fear of citation or penalty.

**Safety Division:** Provides boiler/pressure vessel (PV) and elevator inspection and consultation services to Utah businesses. State inspectors certify that new boiler/PV and elevator installations are in full compliance with applicable safety codes before issuing operating certificates. Existing boilers/PV and elevators are inspected on a periodic basis to assure continued compliance with safety codes. Technical consultation is also provided to solve compliance problems prior to the inspections

**Adjudication Division:** The division's Administrative Law Judges conduct formal evidentiary hearings and issue written decisions resolving disputes arising from the Labor Commission's workers' compensation, fair housing, anti-discrimination, or occupational safety and health activities. The Adjudication Division also approves settlement agreements and administers trust funds for dependents of injured workers.

## Safer .....continued from page 2

CONSTRUCTION FOCUS SPECIAL TRADES	MANUFACTURING	OIL & GAS
Scaffolds	Electrical Safety	Respiratory Protection
Fall protection	Respiratory Protection	Electrical Safety
Respiratory Protection	Machine Guarding	Flammable Liquids & Fire Prevention
Trenching & Excavation	Control of Hazardous Energy (Lockout Tagout)	Occupational Noise Exposure
Hazard Communication	Hazard Communication	Hazard Communication
Ladder Safety	Powered Industrial Trucks	Personal Protective Equipment
Electrical Safety	Process Safety Management	Control of Hazardous Energy
Personal Protective Equipment	Flammable Liquids	Powered Industrial Trucks
Confined Spaces	Confined Spaces	Warning Signs
Powered Industrial Trucks	Welding, Cutting & Brazing	Material Handling

It is through Goals 2 and 3 that UOSH can partner with employers and their employees to provide assistance in achieving safer workplaces and compliance with the UOSH standards. Through compliance assistance and consultation services, UOSH can help employers identify and manage workplace hazards to reduce occupational injuries and illnesses on an individual basis. Employers and employees can find information on occupational safety and health regulations, technical information, and links to outside sources of information by

telephoning our office at (801) 530-6901 or go on-line at [www.uosh.utah.gov](http://www.uosh.utah.gov). The compliance assistance division of UOSH produces an electronic quarterly newsletter which details information about current issues in occupational safety and health and summarizes investigation results of recent fatality inspections and how to prevent future incidents. Employers and employees may sign up for automatic mailing of the quarterly compliance assistance newsletter on UOSH's website, [www.uosh.utah.gov](http://www.uosh.utah.gov).

## **Recent Utah Court of Appeals Decisions**

### **Cunningham v. Labor Commission, et al., unpublished decision issued 8-19-04.**

Cunningham claimed to have been injured in an accident at work. The Administrative Law Judge appointed a medical panel to review Cunningham's claim, then, on the basis of the panel's report, concluded that Cunningham's work accident did not cause her injuries. The ALJ denied Cunningham's claim. The Commission's Appeals Board adopted and affirmed the ALJ's decision. Cunningham then appealed to the Court of Appeals.

The Court ruled that it was within the Appeals Board's discretion to adopt the ALJ's decision, rather than issue a new decision of its own. The Court also ruled that the evidence, particularly the panel's report, was a sufficient basis to deny Cunningham's claim for benefits.

**Florida Asset Financing Corp. v. Labor Commission, et al., published decision issued 8-19-04.** Williams suffered head injuries and other injuries in a work-related motor vehicle accident. He was awarded permanent total disability compensation. He then entered into a complex arrangement with Florida Asset whereby Florida Asset lent Williams \$68,706.06 in return for Williams turning over the next 17 years of disability benefits totaling \$236,624.

When the Commission learned of the foregoing transaction, it advised Florida Asset that the Utah Workers' Compensation Act required Mr. Williams' disability benefits be paid directly to him, rather than to Florida Asset. Florida Asset challenged the Commission's position and obtained a favorable ruling the district court. The Commission appealed to the Court of Appeals.

See **Decisions** on page 4....

## Decisions .... Continued from page 3

The Court of Appeals reversed the district court's decision and accepted the Commission's argument that the plain language of the Workers' Compensation Act requires payment of benefits directly to the injured worker. The benefits payments cannot be diverted to others, including creditors such as Florida Asset. Florida Asset has now asked the Utah Supreme Court to review of the Court of Appeals' decision.

**McLaws v. Kazamini, et al. (unpublished decision issued July 22, 2004).** McLaws claimed workers' compensation benefits for an injury suffered while working for Kazamini. Kazamini, who did not have workers' compensation insurance, argued that McLaws was an independent contractor rather than an employee and was not entitled to workers' compensation benefits. The ALJ ruled against Kazamini and ordered him to pay McLaws' benefits, plus a penalty for failure to carry insurance. The Appeals Board affirmed the ALJ's decision. Kazamini appealed to the Court of Appeals.

The Court of Appeals agreed with the ALJ and Appeals Board that because Kazamini had the right to control McLaws' work, he was McLaws' employer. Kazamini was therefore liable for McLaws' benefits and for the penalty.

## The "Rules" Corner

By Alan Hennebold, Deputy Commissioner & Legal Counsel

The Utah Legislature has granted the Labor Commission authority to adopt rules for administration of some programs within the Commission's jurisdiction. Pursuant to that authority, the Commission is engaged in the following rule-making activity.



### RULES UNDER CONSIDERATION:

RULE NUMBER	DESCRIPTION	STATUS
R602-2-4 Adjudication	<b>Attorneys' fees:</b> This proposal modifies the existing rule for attorneys fees in workers' compensation cases by: 1) increasing the cap on fees; and 2) allowing a fee of not more than \$125 per hour, up to four hours, for consultation and review of claims.	Approved by the Workers' Comp. Advisory Council. Discussed at Open Meeting on October 14. To be published for public comment.
R612-2-22 Industrial Accidents	<b>Medical Records:</b> The Commission has appointed an ad hoc committee to review Commission rules regarding release and use of medical records in light of HIPPA.	Upon completion, the Committee's report will be presented to the Advisory Council.
R 612-4 Industrial Accidents	<b>Premium Rates:</b> Reduces premium assessment rate for Employers' Reinsurance Fund from 9.25% to 7.25%; leaves assessment rates for Uninsured Employers' Fund and Workplace Safety Account at .25%.	Recommendations from actuarial study approved by Workers' Comp. Advisory Council and discussed at Open Meeting on October 14. To be published for public comment.
R614-1-4 UOSH	<b>Respiratory Standards:</b> Adopts federal OSHA standards for respiratory 'fit-testing' and fall protection.	Presented at Open Meeting October 14. To be published for public comment.

# Workers' Compensation Claims Process

By Joyce A. Sewell - Director, Industrial Accidents

Filing a claim for workers' compensation benefits can appear to be a very complicated process for employees whose employers may not be helpful, or who may not understand the process themselves.

Workers' compensation insurance is an industrial insurance which every employer, with very few exceptions, is required to purchase to cover work place injuries and illnesses for its employees. Since the workers' compensation program is a no-fault program, neither the employer nor the employee has to assign fault for an injury occurring in the workplace. The steps of how a workers' claim for benefits proceeds in the system are as follows:

**1) An injured worker reports the injury or illness to his/her employer immediately.** If the injury or illness is beyond first-aid, the employer is to complete the "Employer's First Report of Injury" and, within **seven days**, is to send a copy of the injury report to the Labor Commission, the employer's insurance carrier, and give the injured worker a copy of the injury report. Most insurance companies also have reporting available to their insured employers either through the Internet or by calling an 800 number. This immediate notification allows the injured worker, employer, and insurance carrier to immediately begin to have the injured worker receive the medical care needed to return to work as quickly as possible.

**2) The injured worker tells the medical provider that the injury or illness is work related.** The injured worker must be seen first by the employer's designated physician or medical facility if the employer has chosen a physician or medical facility. If there is no designated medical provider, or once they have seen the designated provider, the injured worker is then free to see a doctor of their choice. The doctor is to report the initial visit by the injured worker to the Labor Commission, the insurance carrier, and give a copy of the report to the injured worker.

**3) The insurance carrier will open a claim for benefits once they have received either one or both reports from the employer or doctor.** The insurance carrier is to make a determination of compensability of the injury or illness within **21 days** of having received a claim for benefits.

**4) Compensable Claim.** If the claim is compensable, and if the doctor determines that the injured worker will lose work time, the insurance carrier is to contact the injured worker and the employer to determine the rate of weekly pay that the injured worker is to receive for the time off work. All medical bills are to be paid by the insurance carrier or self-insured employer (an employer who is not self-insured is not allowed to pay medical bills directly). The injured worker is not to pay anything toward the medical care received. In most cases the claim

for medical benefits is paid, the injured worker returns to work, and the claim is ended.

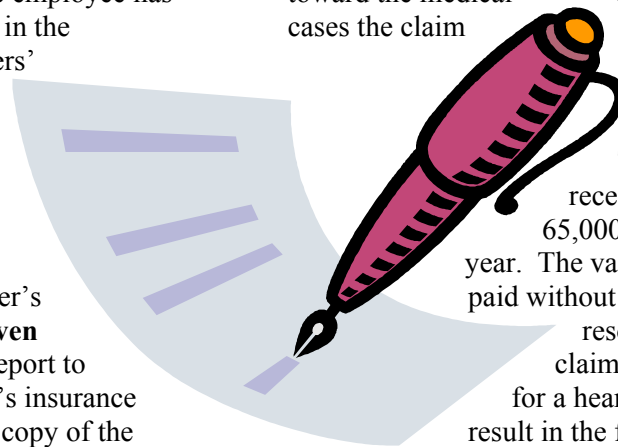
The Commission receives approximately 65,000 reports of injury per year. The vast majority of those are paid without a problem, or are resolved prior to the claimant filing an application for a hearing. Only about 1,300 result in the filing of an application

for hearing.

**5) Denial of the claim.** If the insurance carrier **denies** that the claim is compensable, the insurance carrier is to send a denial letter to the injured worker and the Labor Commission.

**6) Application for Hearing.** If the claim is denied, the injured worker has the right to apply for a hearing at the Labor Commission to have an administrative law judge determine if the injured worker's claim is compensable.

**7) Labor Commission Assistance.** The Industrial Accidents Division has several intake staff, ombudspersons, and mediators to help claimants resolve claims without the need for a formal hearing. However, if the claimant has filed for a hearing, the case continues in the adjudication process until the case is either settled or heard by an administrative law judge. For assistance, an injured worker, employer, or insurance carrier may contact the Industrial Accidents Division at 801-530-6800 or toll free (in Utah) at 1-800-530-5090.



# Guide to Applying for a Workers' Compensation Hearing

by Richard LaJeunesse, Director – Adjudication Division & Administrative Law Judge

Nearly all workers' compensation claims in Utah are settled to the satisfaction of the employee, employer and workers' compensation carrier. In a few cases, an employee is dissatisfied and decides to contest the decision of the workers' compensation insurance carrier. If the employee decides to do this, he/she can challenge the decision by applying for a hearing with the Adjudication Division of the Labor Commission. The following offers a guide to the Adjudication Division hearing process.

**Nearly all workers' compensation claims in Utah are settled to the satisfaction of the employee, employer and workers' compensation carrier.**

## Legal Representation

The Labor Commission requires that Corporations be represented by legal counsel. All other applicants may choose whether or not they utilize an attorney. However, in complex cases, an applicant may be at a disadvantage without legal counsel. An attorney is the only person allowed to charge a fee for representation. Attorney fees are fixed by the Labor Commission and are contingent, which means the attorney is paid only if his/her client wins and then attorney fees are deducted from the award. Fixed attorney fees do not apply to Corporations.

## The Hearing Process May Include Four Levels:

- Adjudication Division of the Labor Commission Prehearing or Evidentiary Hearing
- Labor Commissioner or Appeals Board Review
- Utah Court of Appeals
- Utah Supreme Court

If all parties agree with the findings at any one of the hearing levels, the decision is final. If not satisfied, the employee, the employer, or the workers' compensation carrier may appeal the decision to the next level.

## Requesting a Hearing before the Adjudication Division Steps:

- Obtain, either in person or by mail, an Application for Hearing from the Adjudication Division
- Fill in each line on the form thoroughly
- Applicant must supply the following supporting documents:
  - List of medical providers for previous 15 years
  - Original Authorization for Release of Medical Record
  - Summary of Medical Record
- Submit Application for Hearing and all supporting documents to the Adjudication Division

Upon receiving an Application for Hearing along with all supporting documents, the Adjudication Division will send a copy of the application and documents to the employer's insurance carrier or to the employer directly if the employer is either self-insured or uninsured. The carrier or employer has 30 days to answer an employee's claim. The Adjudication Division will review the response to the claim and schedule a Pre-Hearing if there is an indication that the case could be solved quickly. If not, a full Evidentiary Hearing will be scheduled. Due to the Division's heavy caseload, either hearing may not take place for as long as 4-5 months.

## Adjudication Division Evidentiary Hearing

The Evidentiary Hearing is a formal hearing similar to a court hearing. Testimony is taken under oath and evidence is presented. Hearings are held in the Labor Commission Salt Lake City office for nearby residents or in other locations as needed. The case will be heard by an Administrative Law Judge.

## Preparation for an Evidentiary Hearing

- Prepare thoroughly and carefully
- Arrange to have all documents and medical reports and witnesses, if needed, at the hearing
- Know exact lost work days due to the employee's injury
- Prepare to present pictures and diagrams of the work area if needed
- Arrange for subpoenas through the Administrative Law Judge if needed, but

remember that witness fees are paid by the person requesting the subpoena

### **At the Evidentiary Hearing**

- State your position and present evidence, documents and witness statements
- Bring witnesses if needed to prove issues which are in dispute

The Administrative Law Judge may announce a decision at the conclusion of the Evidentiary Hearing or choose to gather more information and study the evidence further. The Judge may refer the file to a Medical Panel for review of disputed medical issues that arise during the Evidentiary Hearing. Medical Panel physicians may request to examine the injured worker. The Labor Commission will pay for the Medical Panel review and medical examination.

The Medical Panel's report will be mailed to the employee, the employer, and the workers' compensation carrier by certified letter. If any of the parties are dissatisfied with the Medical Panel report, an objection may be filed within 15 days from the date of the certified letter. The objection will be considered and ruled on by the Judge. A hearing on the objection may be scheduled if the objecting party is prepared to have medical witnesses testify at the objecting party's expense. If no objections are filed, then the Judge will write a decision called an Order. The Order will be mailed to all parties.

### **Filing a Motion for Review**

If dissatisfied with the decision of the Administrative Law Judge, the claimant may file a Motion for Review within 30 days of the date of the Order. The Administrative Law Judge will review the motion and choose one of the following options:

- Amend or modify the prior order by a supplemental order
- Refer the case for review to the Labor Commissioner or Appeals Board

### **Appealing a Decision to the Labor Commissioner or Appeals Board**

If the Motion for Review is referred for review, the file will be studied by the office of General Counsel and presented to the Commissioner or Appeals Board. The Commissioner or Appeals Board may affirm, amend, modify or reverse the Administrative Law Judge's Order or return the case to the Judge for further proceedings or findings.

### **Using the Court Systems**

The dissatisfied party has the right to appeal the final ruling of the Labor Commission to the Utah Court of Appeals by filing a Notice of Appeal within 30 days of the date on the Commission's written decision. The Court of Appeals may hear oral arguments in the case (no new evidence will be considered) and may affirm, amend, modify or reverse the Commission's decision, or may even return the case to the Commission for further proceedings or findings.

With an attorney, the dissatisfied party may appeal the case to the Utah Supreme Court. However, the claim may be heard only at the Court's discretion.

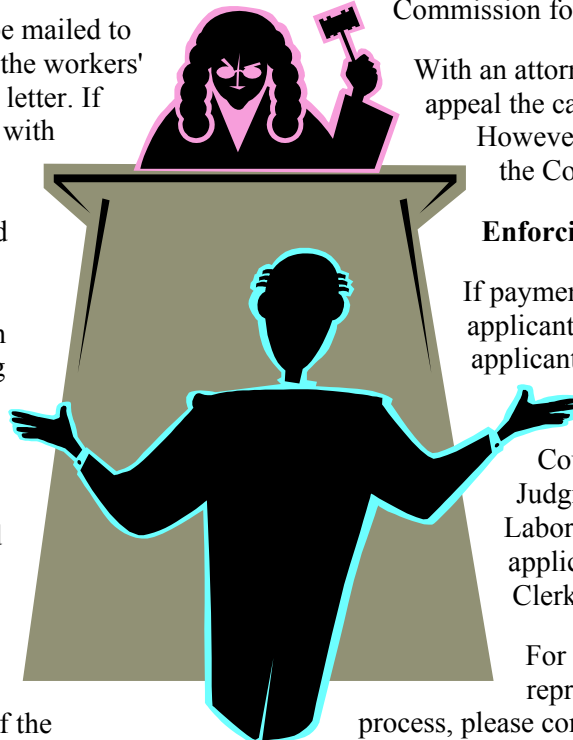
### **Enforcing the Payment of Benefits**

If payment of benefits is awarded an applicant but the carrier does not pay, the applicant may enforce the award by initiating collection proceedings in the District Court system. An abstract of the Judgment may be obtained from the Labor Commission for filing by the applicant's attorney with the County Clerk.

For information on obtaining legal representation for the Application process, please contact the General Counsel of the Labor Commission for advice on how to proceed.

If you have questions, call the Labor Commission at 801-530-6800 or use the statewide toll free number 1-800-530-5090.

For clarity, please refer to the case by the date of the injury, the name of the injured employee and the employer.



## **Labor Commission Medical Director wins National Award**

Dr. Alan Colledge, Medical Director for the Utah Labor Commission, was recently presented with the International Association of Industrial

Accidents Boards and Commissions (IAIABC) *President's Award* at their annual meeting in New York City.

IAIABC is an organization for the advancement of the Workers' Compensation System. IAIABC President, Mr. Frank Fennerty, stated that "Dr. Colledge has been the driving force behind the development of the IAIABC Supplemental Guides for Rating Permanent Impairment. He has distinguished himself as an excellent speaker at the Workers' Compensation College, Annual Convention, and other national events. To work with Alan is to be awestruck of his level of energy and unswerving commitment to projects he feels are important to the betterment of medicine and the workers' compensation

Functional Capacity Assessment, Utilization Review, Treatment Guidelines, Pain Committee, and the Restorative Services Committee. Needless to say, his energy had better be endless to keep up with that list of

responsibilities! Our congratulations and thanks to Dr. Colledge, shown above with his wife, Kristine.



system".

Dr. Colledge serves as committee chairman for Impairment Ratings, Provider Education, Physician Outcome Assessment, the Medical Fee Schedule,